



# CALIFORNIA FARM BUREAU FEDERATION

## NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 River Plaza Drive, Sacramento, CA 95833-3293

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January 3, 2004

Tam Doduc  
Office of the Secretary  
California Environmental Protection Agency  
P.O. Box 2815  
Sacramento, CA 95812

**RE: Guidance Development on “Precautionary Approaches” in Phase One of the Environmental Justice Action Plan**

Dear Ms. Doduc:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation based in Sacramento. The Farm Bureau’s purpose is to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable food and fiber supply through responsible stewardship of California’s resources. Its members consist of 53 county Farm Bureaus and, through them, more than 89,000 farm families and individual members. Farm Bureau hereby submits the following comments regarding the development of guidance on “Precautionary Approaches” to evaluating environmental projects in Phase One of the Environmental Justice Action Plan, due to be completed in early 2005.<sup>1</sup> We believe that any use of “Precautionary Approaches” must clearly provide an accurate definition of the term, an explanation and justification for its use in connection with a given project, and, if and when it is used, full disclosure of its implications for, and impacts upon, agriculture. In this way, it will be possible to ensure it does not result in detrimental effects on the sustainability of California’s agricultural industry and its ability to produce safe, reliable food and fiber in an environmentally sensitive manner.

Foremost, the use of “Precautionary Approaches” must not preempt an agency’s statutory and equitable duty to make decisions based on sound science that has been subjected to peer review. Only after due diligence and a determination that there is no alternative may an agency even consider less reliable and appropriate non-science based standards in evaluating an action or project, such as best professional judgment given the facts and circumstances or “Precautionary Approaches.” If a non-science based route is taken, for

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<sup>1</sup> Farm Bureau also herein incorporates by reference comments submitted by Cynthia Cory on December 17, 2004 regarding pesticide air monitoring.

example, “Precautionary Approaches,” California Environmental Protection Agency (“Cal/EPA”) Boards, Departments, and Offices must acknowledge that “Precautionary Approaches” are decision-making policy criteria, **not** scientific standards of proof required by the statute under which the agency is acting.

**Developing a common, objective working definition for “Precautionary Approaches”.**

The starting point for the development of a common, objective working definition of “Precautionary Approaches” should be consideration of its current usage and true meaning. For example, it is our understanding that several versions of the “Precautionary Approaches” currently exist. The prototype is found in Principle 15 of the 1992 Rio Declaration of the United Nations Conference on Environment and Development, 31 I.L.M. 874 (1992), which states: “In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” Furthermore, the definition should encompass its practical usage and effect as a theory predicated on the absence of full scientific certainty.

In developing a common, objective definition, it is particularly insightful to consider existing usage by a recognized authority such as the National Academy of Science (“NAS”). In 2003, the NAS published a report<sup>2</sup> that, among other items, discussed the use of the precautionary approach.<sup>3</sup> In part, it stated:

The precautionary principle ... is a decision-making policy instrument, not a scientific standard of proof or a requirement of the ESA.<sup>4</sup> [¶] [E]ven when a policy decision is made to apply the precautionary principle, the question of whether the decision is consistent with the available scientific information is important.<sup>5</sup>

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<sup>2</sup> Committee on Endangered and Threatened Fishes in the Klamath River Basin, Endangered and Threatened Fishes in the Klamath River Basin: Causes of Decline and Strategies for Recovery, (2003) (Prepublication Copy) (Hereinafter “Final Report”).

<sup>3</sup> The National Academy of Science referred to precautionary approaches as the “precautionary principle.” However, to remain consistent with the solicitation for comments, the term “Precautionary Approaches” is used within this comment letter.

<sup>4</sup> Final Report at 267. In the Final Report, the primary focus of the NAS was with the Endangered Species Act.

<sup>5</sup> *Id.*

NAS's statements and usage are particularly important in the crafting of a definition because in the decision-making context, Cal/EPA Boards, Departments, and Offices often have the discretion to utilize the precautionary principle, whether formally defined or not, when they are confronted with substantial, but inconclusive or conflicting data. Moreover, an agency must be held accountable when utilizing "Precautionary Approaches" by being required to justify such decisions and reconcile them with the best available science.

Time invested now in establishing clear definitions and terms governing the use of "Precautionary Approaches" may prevent future consternation and disputes because, as stated by the NAS, "[a]t some point, however, erring on the side of protection in decision-making ceases to be precautionary and becomes arbitrary."<sup>6</sup>

**Developing an inventory of where/how "Precautionary Approaches" are used in Cal/EPA's environmental programs, and any obstacles that limit use of "Precautionary Approaches."**

Given the acknowledged absence of a definition of "Precautionary Approaches" and when and how they are used, a current inventory, as described in section 2.1 of the Environmental Justice Action Plan, of where or how "Precautionary Approaches" are used in Cal/EPA's environmental programs cannot be accurately completed. The lack of a clear definition of "Precautionary Approaches" in the past prevents the proper categorizing and cataloguing of its prior use. An accurate and acceptable definition should be developed for future use and application if and when appropriate.

In conclusion, although Farm Bureau maintains a science-based approach is always the superior and preferable approach, we urge careful consideration of the NAS's views on the "precautionary principle" in the development and implementation of a program that utilizes the analogous "Precautionary Approaches."

Thank you for the opportunity to comment.

Sincerely,

/s/ Brenda Jahns Southwick

BRENDA JAHNS SOUTHWICK  
Managing Counsel

BJS:JRH/pkh

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<sup>6</sup> *Id.*